

MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

Plaintiff Thomas Johnson's ("Plaintiff") claims against Contemporary Information Corporation ("CIC") are fatally misplaced. Plaintiff applied for a job with a property management company that failed to comply with its statutory and contractual obligations when requesting Plaintiff's background screening report and failed to appropriately consider all of the information provided in that report before rescinding its job offer to Plaintiff. Yet, Plaintiff has elected to sue CIC, which did nothing more than provide a facially-accurate sex offender registry match in response to what it thought was a tenant background screening request. When Plaintiff informed CIC that the property management company had used its tenant screening portal to conduct an employment screening, and that the property management company rescinded Plaintiff's job offer on the basis of a sex offender record that the property management company had every reason to know did not belong to Plaintiff, CIC corrected Plaintiff's report in one day. (Compl. ¶¶ 51-52).

Because the sex offender data CIC provided on Plaintiff's background screening report matched the identifying information provided to CIC, and because the property management company's conduct was an intervening cause of Plaintiff's alleged injury, Plaintiff cannot state a claim against CIC under the Fair Credit Reporting Act ("FCRA") and Investigative Consumer Reporting Agencies Act ("ICRAA"). Accordingly, pursuant to Federal Rule of Civil Procedure 12(b)(6), Plaintiff's claims against CIC should be dismissed, with prejudice.

BACKGROUND FACTS

On November 9, 2020, Plaintiff applied for a position on the maintenance team of a property management company in the greater Oakland, California area. (Compl. ¶¶ 27–28.) Before offering Plaintiff a position, the property management company conducted a criminal background check on Plaintiff. (Compl. ¶ 24.) The property management company, in violation of the FCRA¹ and its contractual obligations, requested Plaintiffs'

¹ See 15 U.S.C. § 1681b(a).

1 employment background screening report through its *tenant* screening portal with East Bay
 2 Rental Housing Association (“EBRHA”). (Compl. ¶ 50); *see also* a true and correct copy
 3 of the full report the property management company requested from EBRHA, attached
 4 hereto as Exhibit A.²

5 As a consumer reporting agency, CIC may only provide a consumer report for one
 6 of the permissible purposes enumerated under 15 U.S.C. § 1681b(a). As provided on the
 7 consumer report at issue, the only certified permissible purpose for background screening
 8 reports provided by EBRHA is tenant background screening. *See* Exh. A at 9 (“This report
 9 was generated for rental application purposes. This report is confidential and is not to be
 10 disclosed except for persons who have legitimate purposes as defined in the Fair Credit
 11 Reporting Act and other applicable Federal and State regulations. Neither East Bay Rental
 12 Housing Association, nor its sources or distributors warrant such information nor shall they
 13 be liable for your use or reliance upon it.” (emphasis added)).

14 On November 13, 2020, the property management company requested Plaintiff’s
 15 background screening report from EBRHA, which, in turn, obtained Plaintiff’s criminal
 16 background information from CIC. (Compl. ¶¶ 35, 50.) Not knowing that the property
 17 management company misrepresented its permissible purpose under the FCRA or ICRAA
 18 to request Plaintiff’s background screening report, CIC conducted a search of its criminal
 19 and sex offender records database using the identifying information provided to it by
 20 EBRHA. This search resulted in a match with an individual on Virginia’s sex offender
 21 registry based on Plaintiff’s first name, last name, age, and prior residence in Virginia. (*See*
 22 Compl. ¶ 39; Ex. A.) CIC relayed all information available on the Virginia sex offender
 23 registry for the matching individual, including a picture and physical description. (*Id.*) This
 24 information was included in the EBRHA report provided to the property management
 25

26 ² The Court can and should consider a full copy of the report, excerpted in Plaintiff’s
 27 Complaint at paragraph 39, for the purposes of CIC’s Motion to Dismiss, as the full report
 28 is incorporated by reference into Plaintiff’s Complaint. *See Parrino v. FHP, Inc.*, 146 F.3d
 699, 706 (9th Cir. 1998) (superseded by statute on other grounds) (Courts may consider in
 a motion to dismiss a document not attached to the Complaint “the authenticity of which
 is not contested, and upon which the plaintiff’s complaint necessarily relies.”).

1 company. (*Id.*) Above the sex offender registry information, the EBRHA report provided
 2 a disclaimer, which reads in part:

3 [T]he end user should cross check the applicant supplied
 4 information with the date of birth, middle name, physical
 5 descriptors and geographical areas where the applicant has lived
 6 to determine a positive match. Any criminal records listed herein
 must be carefully reviewed by the end user of this report prior to
 making any decision. If you need assistance please call 800-288-
 4757 x1.

7 (*Id.*)

8 The property management company ultimately rescinded Plaintiff's job offer.
 9 (Compl. ¶ 46.) Upon information and belief, the property management company did not
 10 provide Plaintiff the pre-adverse action notice or opportunity to dispute the conviction
 11 record on his background screening report as required by Cal. Gov. Code § 12952. On
 12 December 1, 2020, Plaintiff disputed the sex offender match on his background screening
 13 report with CIC. (Compl. ¶ 51.) CIC investigated Plaintiff's dispute and responded with a
 14 corrected report the next day. (Compl. ¶ 52.)

15 Plaintiff filed this lawsuit on June 25, 2021 in Alameda County Superior Court,
 16 claiming that CIC violated the FCRA and ICRAA by failing to maintain reasonable
 17 procedures to ensure maximum possible accuracy of the information on his background
 18 screening report. On July 28, 2021, CIC removed this case to this Court.

19 ARGUMENT

20 To make out a prima facie case under 15 U.S.C. § 1681e(b), which requires that
 21 consumer reporting agencies "maintain reasonable procedures to ensure maximum
 22 possible accuracy" of the information they report, Plaintiff must show that CIC prepared a
 23 report containing inaccurate information, and that the inaccurate report caused him to suffer
 24 a compensable injury. *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333(9th
 25 Cir. 1995) (citing *Cahlin v. General Motors Acceptance Corp.*, 936 F.2d 1151, 1156 (11th
 26 Cir. 1991); *accord, Erickson v. First Advantage Background Servs. Corp.*, 981 F.3d 1246,
 27 1251 (11th Cir. 2020). California Civil Code § 1786.20(b), the ICRAA provision under
 28 which Plaintiff brings his claim, uses identical language to § 1681e(b). Cal. Civ. Code §

1 1768.20(b) (investigative consumer reporting agency “shall follow reasonable procedures
 2 to ensure maximum possible accuracy.”); *see, also, White v. RentGrow, Inc.*, No. 3:19-cv-
 3 00626, 2021 WL 130586, at *4 (M.D. Tenn. Jan. 14, 2021) (recognizing that 15 U.S.C. §
 4 1681e(b) and Cal. Civ. Code § 1786.20(b) are “parallel” statutes). Accordingly, Plaintiff’s
 5 ICRAA claim ought to be analyzed in line with FCRA case law interpreting § 1681e(b).

6 Plaintiff cannot show either element of his claims, as the sex offender match on his
 7 background screening report was not, on its face, inaccurate or misleading. Moreover,
 8 Plaintiff admits that the property management company, not CIC’s criminal records
 9 reporting, caused Plaintiff’s alleged injuries. Accordingly, Plaintiff’s claims against CIC
 10 must be dismissed.

11 **I. PLAINTIFF CANNOT SHOW THAT HIS REPORT WAS INACCURATE**
 12 **ON ITS FACE.**

13 The sex offender match on Plaintiff’s EBRHA background screening report, when
 14 coupled with the disclaimer included in the report, was neither inaccurate on its face nor
 15 objectively misleading. “[T]o reach ‘maximum possible accuracy’” as required by 15
 16 U.S.C. § 1681e(b) “information must be factually true and also unlikely to lead to a
 17 misunderstanding.” *Erickson*, 981 F.3d at 1252; *see, also, Gorman v. Wolpoff & Abramson,*
 18 *LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009). “[W]hether a report is misleading is an objective
 19 measure, one ‘that should be interpreted in an evenhanded manner toward the interests of
 20 both consumers and potential creditors.’” *Id.*

21 In *Erickson*, the Eleventh Circuit addressed a similar situation to this matter in which
 22 a background screening report incorrectly attributed a sex offender registry match to the
 23 plaintiff based on a first and last name match. *Id.* at 1249. The report in question included
 24 a disclaimer which stated “[t]his Record is matched by First Name, Last Name ONLY and
 25 may not belong to your subject. Your further review of the State Sex Offender Website is
 26 required in order to determine if this is your subject.” *Id.* The report went on to state that
 27 the end user should compare the ““demographic data and available photographs”” when
 28 considering the matched sex offender records. *Id.* The court held that, even though the

1 matched sex offender record did not, in fact, belong to the subject of the report, the report
 2 was not inaccurate by the standard of § 1681e(b). *Id.* at 1253. It was true that a sex offender
 3 shared the report subject's first and last name, and the report cautioned that the details of
 4 the match must be closely examined. *Id.* Moreover, the report was not misleading, because
 5 the disclaimer informed the end user that the sex offender record might not belong to the
 6 report subject, and that further review was required before the end user could rely on the
 7 match. *Id.*

8 Here, as in *Erickson*, the sex offender record on Plaintiff's background screening
 9 report matched his first and last name (plus his age and former state of residence) and the
 10 report informed the end user that further review was required before it could act on the sex
 11 offender match. As noted above, and as Plaintiff concedes, multiple data points available
 12 on the Virginia sex offender registry for the sex offender Thomas Johnson matched
 13 Plaintiff's own information. The report does not say that the sex offender Thomas Johnson
 14 is the same person as Plaintiff, simply that the identifying information provided matches
 15 the information of a particular individual on the Virginia sex offender registry. (*See* Compl.
 16 ¶ 39.) Further, the report cautions the end user that, while industry best practices were
 17 employed to ensure accurate matches, further review was necessary to confirm that the
 18 Thomas Johnson on the Virginia sex offender registry was the subject of the report. To
 19 facilitate this review, CIC provided all information available on the Virginia sex offender
 20 registry, including a picture of the matched sex offender. (*Id.*) Accordingly, the report was
 21 both factually accurate and objectively not misleading. Without an inaccurate report,
 22 Plaintiff cannot state a *prima facie* claim for a violation of § 1681e(b) or the ICRAA.

23 **II. CIC'S REPORTING WAS NOT THE CAUSE OF PLAINTIFF'S ALLEGED**
INJURIES.

25 Even if Plaintiff's report was inaccurate, the unlawful conduct of the property
 26 management company that requested Plaintiff's report, not CIC's reporting, was the cause
 27 of Plaintiff's alleged injuries. As noted above, EBRHA provides a tenant screening report,
 28 not an employment screening report. (Exhibit A, pg. 9). Thus, the *only* FCRA permissible

1 purpose that EBRHA provides for on its report—and thereby certifies to CIC—is “for
 2 rental application purposes.” (*Id.*) As such, the property management company
 3 misrepresented to EBRHA that it was requesting Plaintiff’s background screening report
 4 “for rental application purposes” and then improperly used the report for employment
 5 purposes.

6 Had the property management company properly requested an employment
 7 screening report for Plaintiff, California law governing the consideration of criminal
 8 conviction history in employment decisions requires that:

9 if the employer makes a preliminary decision that the applicant’s
 10 conviction history disqualifies the applicant from employment,
 11 the employer shall notify the applicant of this preliminary
 12 decision in writing.

13 Cal. Gov. Code § 12952(c)(2). Following this notification, the applicant:
 14 shall have at least five business days to respond to the notice
 15 provided to the applicant under paragraph (2) before the
 16 employer may make a final decision. If, within the five business
 17 days, the applicant notifies the employer in writing that the
 18 applicant disputes the accuracy of the conviction history report
 19 that was the basis for the preliminary decision to rescind the offer
 20 and that the applicant is taking specific steps to obtain evidence
 21 supporting that assertion, then the applicant shall have five
 22 additional business days to respond to the notice. . . . The
 23 employer shall consider information submitted by the applicant
 24 pursuant to paragraph (3) before making a final decision.

25 Cal. Gov. Code § 12952(c)(3), (4).

26 Had the property management company requested Plaintiff’s background screening
 27 report through an employment screening portal, not only would CIC have been aware that
 28 it was providing an employment screening report subject to additional regulations under
 California law, but Plaintiff would have had ample opportunity to dispute the sex offender
 match on his report before the property management company could withdraw his offer.

29 Furthermore, the property management company had ample information, on the face
 30 of Plaintiff’s report, to see that the matched sex offender record did not belong to Plaintiff.
 31 As Plaintiff points out, CIC included a physical description, date of birth, and middle name
 32 among the information it pulled from the Virginia sex offender registry that do not match
 33 Plaintiff. (Compl. ¶ 39; Ex. A.) The report also included a picture of the sex offender

1 Thomas Johnson. (*Id.*) The employees of the property management company, some of
 2 whom had met Plaintiff in person (*id.* at ¶¶ 30–31), failed to confirm that the person
 3 described in the sex offender registry data was not Plaintiff. The property management
 4 company, which also had a copy of Plaintiff’s driver’s license, was in a better position than
 5 CIC to know whether the matched sex offender record actually belonged to Plaintiff. The
 6 property management company’s ability to better evaluate all information before it is why
 7 the disclaimer in the report makes clear that further review was necessary before making
 8 any decisions based on the sex offender data in the report. The property management
 9 company failed to do so.

10 Accordingly, Plaintiff’s alleged injury was directly caused by the property
 11 management company’s failure to properly request Plaintiff’s employment screening
 12 report, failure to comply with California law, and failure to recognize, in light of *all* of the
 13 information on Plaintiff’s report, that the matched sex offender records did not belong to
 14 Plaintiff. Plaintiff cannot prove that his alleged injury was caused by CIC’s consumer
 15 reporting activities.

16 CONCLUSION

17 For the reasons stated above, Plaintiff’s claims against CIC should be dismissed,
 18 with prejudice.

19
 20 DATED: August 4, 2021

FOLEY & LARDNER LLP

21 Christi A. Lawson
 22 John J. Atallah

23
 24 /s/ Christi A. Lawson

25 Christi A. Lawson
 26 John J. Atallah
 27 *Attorneys for Defendant*
Contemporary Information
Corporation